



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0526]

RIN 1625-AA09

Drawbridge Operation Regulation; Umpqua River, Reedsport, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the U.S. 101 Umpqua river swing bridge, mile 11.1, at Reedsport, OR. The rule change is necessary to accommodate Oregon Department of Transportation's (ODOT) extensive bridge maintenance and restoration efforts. The bridge is currently scheduled to open on signal if at least two hours notice is given. The ODOT will only open the bridge with a minimum of six hours notice and will limit the openings to twice daily; once in the morning and once in the evening.

DATES: This temporary final rule is effective from 7 a.m. on December 1, 2013 to 11:59 p.m. on September 30, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0526]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail call or e-mail Steven M. Fischer, Thirteenth District Bridge Program Office, Coast Guard, telephone 206-220-7282; e-mail Steven.M.Fischer3@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Regulatory History and Information

On August 5, 2013 the Coast Guard published a notice of

proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulation; Umpqua River, Reedsport, OR in the Federal Register (77 FR 47242). We received 0 comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. The NPRM produced 0 comments and all waterway users of the bridge have been contacted and agreed to the Oregon Department of Transportation renovation plan.

B. Basis and Purpose

The U.S. 101 Umpqua River Bridge is a swing span drawbridge, near Reedsport, OR, located at waterway mile 11.1. In the closed position, this drawbridge has a vertical clearance of 36 feet above mean high tide. The current operating regulations states that the U.S. 101 Umpqua River Bridge shall open on signal if at least two hours notice is given. The vessel traffic along this part of the Umpqua River consists of vessels ranging from occasional commercial tug and barge to small pleasure craft. The Oregon Department of Transportation (ODOT) has examined bridge opening logs and contacted all waterway users that have requested bridge openings throughout the last two years. The input ODOT received from waterway users indicated that the change will

likely have a minimal impact on users, and ODOT has identified and mitigated concerns by offering to provide a location for a limited number of vessels up to 75' in length to dock during non-opening hours down river from the U.S. 101 Umpqua River Bridge at Salmon Harbor Marina.

The ODOT, who owns and operates this bridge, has requested a temporary change to the existing operating regulations of the U.S. 101 Umpqua River Bridge, at Reedsport, OR to facilitate restoration of the bridge. The restoration project will entail painting, rust removal, and steel repairs which require full containment to keep paint and debris out of the Umpqua River. The bridge swing span requires a containment system that is balanced in order to allow the bridge to open properly.

The containment structure will extend ten feet below the bridge, reducing the existing clearance of the bridge from approximately 36 feet to approximately 26 feet at mean high tide.

C. Discussion of Comments, Changes and the Temporary Final Rule

The Coast Guard provided a 30 day comment period on the notice of proposed rulemaking and no comments were received.

The Temporary Final Rule modifies the operating regulation for the US 101 Umpqua River Bridge and requires that the bridge will only open twice daily, once at 7 a.m. and

once at 6 p.m., and only if an opening is requested at least six hours in advance. This differs from the existing regulation in that the presently the bridge will open at all times (except during authorized closure periods) provided that two hours advanced notice is given. This amendment is necessary to increase efficiencies for the ODOT construction crews and accommodate both the needs of the waterway and highway users while exercise good stewardship of public funding during ODOT extensive bridge maintenance and restoration efforts from December 2013 through September 2015. This will be accomplished by eliminating the current open-on-demand regulation which would require the ODOT construction crews from repeatedly installing and uninstalling the containment system which needs to be cleaned out and disassembled on both sides of the swing span due to the need to maintain proper balance between the spans. The estimated time to clean and disassemble the containment system is approximately 2 hours.

We did make a change from what we proposed in the NPRM. We revised the amendatory instructions so that paragraph (a) of 33 CFR 117.893, which governs the current schedule for the draw of the US 101 Bridge, mile 11.1, at Reedsport, Oregon, is suspended for the duration of the rule, and a paragraph (d), reading the same as the revised paragraph we proposed in the NPRM, is added for the duration of the rule. This will

achieve the intended result of the schedule reverting back to the current schedule after ODOT extensive bridge maintenance and restoration efforts are completed and this rule expires.

C. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard bases this finding on the facts that all impacted vessels will be granted with advance notification and that ODOT has agreed to docking location for a limited number of vessels up to 75' in length to dock during non-opening hours down river from the U.S. 101 Umpqua River Bridge at Salmon Harbor Marina.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because all vessels asking for an opening will receive an opening. Additionally, because the bridge provides 36 feet of vertical clearance when it is in the closed position vessels which do not require an opening to pass beneath the bridge may do so at any time.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. The Coast Guard provided a 30-day comment period and no comments were received, therefore our determination that this

rule does not have implications for federalism remains unchanged.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. The Coast Guard provided a 30-day comment period and no comments were received, therefore our determination that this rule does not have implications for Unfunded Mandate Reform Act remains unchanged.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order

12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulation for a drawbridge. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of
Homeland Security Delegation No. 0170.1.

2. Amend §117.893 by suspending paragraph (a) and adding paragraph (d) to read as follows:

§ 117.893 Umpqua River.

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(d) From 7 a.m. on December 1, 2013 to 11:59 p.m. on September 30, 2015, the draw of the US 101 Bridge, mile 11.1, at Reedsport, Oregon, shall open at 7 a.m. and 6 p.m. when at least 6 hours of advance notice is given.

Dated: November 6, 2013

R. T. Gromlich,
Rear Admiral, U. S. Coast Guard,
Commander, Thirteenth Coast Guard District.

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Date: 11/25/2013]